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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

GARY TYRONE HILL,

Defendant and Appellant.

C061810

(Super.Ct.No.
09F01900)

Defendant Gary Tyrone Hill entered a negotiated plea of no contest to possessing cocaine. (Health & Saf. Code, § 11350, subd. (a).) The trial court suspended imposition of sentence and placed defendant on three years' probation with various terms and conditions.

On appeal, defendant contends, and the People concede, a condition of his probation is unconstitutionally overbroad. We accept the concession and shall modify the probation order.

DISCUSSION

Over defendant's objection, the court imposed a condition of probation requiring, among other things, that defendant "not

associate with known or reputed users of marijuana, dangerous drugs or narcotics nor be in places where narcotics and/or dangerous drugs are present.”

The parties agree this an unconstitutionally vague and overbroad condition of probation that must be modified to include a knowledge qualifier.

In *In re Sheena K.* (2007) 40 Cal.4th 875, the California Supreme Court held (1) a probationary condition prohibiting the probationer from associating with anyone who is a member of a specified class of persons, without a requirement that the probationer know the person is a member of the class, is unconstitutionally vague (*id.* at pp. 889-892); (2) because such a condition presents a pure question of law, a probationer’s failure to object to its imposition does not forfeit the issue for appeal (*id.* at pp. 888-889); and (3) an acceptable remedy when such a condition is challenged on appeal is for the appellate court to insert the knowledge requirement (*id.* at p. 892).

Here, the challenged probation condition is similar for constitutional purposes to the one disapproved by *In re Sheena K.*, *supra*, 40 Cal.4th 875, at pages 889-892. Thus, we will insert the knowledge requirement proposed by the parties. (See *People v. Garcia* (1993) 19 Cal.App.4th 97, 102-103.)

DISPOSITION

The probation condition regarding association with users of narcotics is modified to state: “Defendant is not to associate with individuals he knows are unlawfully using drugs and/or

narcotics, and he is not to be in places where he knows drugs and/or narcotics are illegally present." As so modified, the judgment is affirmed. The trial court is directed to amend its records to reflect the modifications and to forward the appropriate amended documents to defendant and to the probation department.

SCOTLAND, P. J.

We concur:

SIMS, J.

NICHOLSON, J.